

SEAN HUDGEONS )  
                     Claimant )  
V. )  
) Docket No. 1,071,263  
JIFFY LUBE )  
                    Respondent )  
AND )  
) )  
ZURICH AMERICAN INSURANCE CO. )  
                    Insurance Carrier )

Claimant requests review of the November 13, 2014, preliminary hearing Order entered by Administrative Law Judge (ALJ) William G. Belden.

Dennis L. Horner, of Kansas City, Kansas, appeared for the claimant. Brian J. Fowler, of Kansas City, Missouri, appeared for respondent and its insurance carrier (respondent).

The Board has adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of Preliminary Hearing from November 12, 2014, with exhibits attached and the documents of record filed with the Division.

The ALJ found claimant eligible to receive medical compensation in association with the compensable accident on September 5, 2014, while working for respondent. He found claimant did not meet his burden of proving a compensable event occurred on September 20 or 22, 2014. The ALJ authorized the Wound Care Center at Olathe Medical Center to provide claimant with treatment, testing and referrals reasonably necessary to cure and relieve the effects of the work-related injuries, to be paid by respondent. The ALJ further ordered respondent and its carrier to pay claimant \$125.44 in medical mileage. Claimant's request for payment of past medical expenses in claimant's Exhibit 2, was deferred until regular hearing. The request for temporary total disability compensation was denied.

Claimant appeals arguing the ALJ failed by not awarding past incurred medical expenses to be paid, as it encourages employers and insurance carriers to ignore statutory mandates to provide timely care, impacts negatively health care provider's interests in treating injured workers and clouds injured workers' credit ratings. Claimant also argues the ALJ erred by not awarding temporary total disability benefits despite claimant's inability to operate a motor vehicle to travel to work or medical care, or to complete the duties required of his job at Jiffy Lube.

Respondent contends the Order should be affirmed. Respondent argues it was proper for the ALJ to stay claimant's demand for payment of past incurred medical bills as K.S.A. 44-510j(h) provides in part that prior medical expenses may be stayed until after the final adjudication of the claim. Respondent also contends claimant is not entitled to temporary total disability benefits as he continued working at his family's car dealership following the work injury and was not rendered completely and totally incapable of engaging in any type of substantial and gainful employment.

Claimant raises the following issues on appeal:

1. Is claimant entitled to past medical expenses incurred as the result of his injuries on September 5, 2014?
2. Is claimant entitled to temporary total disability compensation?

#### **FINDINGS OF FACT**

Claimant was hired by respondent for a management training position, with the title of Fast Track Manager. This position required that claimant change oil and oil filters, lubricate cars and put in air filters and air cleaners. His daily duties had claimant on his feet all day. Claimant was paid \$15.88 an hour and worked 50 to 60 hours a week. Claimant testified that the location he worked at had two lanes with four bays and each bay had an open area in the garage floor through which the mechanics would work. Claimant testified he had to go down steps to the area below the bay to work on the vehicles. He testified there is steel grating in these pits where the mechanics work. He described it as a catwalk that the workers stand on to do their work.

Claimant testified that around 3:30 p.m., on September 5, 2014, he was working in one of the bays and was making his way to the office when he slipped and landed on the grating, injuring his right knee. He felt immediate pain and saw his right knee was cut. He made his way upstairs, sat down and reported the accident to his manager, Shannon Hennigan, who told claimant he had 24 hours to decide if he wanted to keep working or pursue workers compensation. Claimant testified Mr. Hennigan indicated he needed to go to the emergency room, but did not offer to call an ambulance or to take him. Claimant drove himself to the emergency room at Miami County Medical Center where his right leg was sutured. He was told not to stand for longer than 20 minutes, to avoid lifting with the

injured leg, to avoid bending and lifting for a week and follow-up with his family physician.

The next day, September 6, 2014, claimant presented his restrictions to Mr. Hennigan, and asked to file a workers compensation claim. He was asked a series of questions and assumed a report was being submitted. He was sent for a UA, but was unable to complete it because the two test location options were closed. Claimant was not given the option of having the UA completed elsewhere.

Claimant returned to work on September 7, 2014, and on the 8th he damaged three stitches on his bottom laceration. Claimant went to his family physician on the 9th and on the 10th was told to stay off his leg completely. On September 11, 2014, Douglas Knox, M.D., took claimant off work to rest at home for two days. An MRI was ordered. On September 16, claimant was required to go to training. On September 18, 2014, claimant was taken off work for three weeks contingent on his healing.

On September 20, 2014, claimant was at his family's car dealership and walked in to open the door, when his knee gave out and he fell, landing on a piece of concrete ramp. He had stopped by to check mail, but was not scheduled to work that day. Claimant was transported by ambulance to Miami County Medical Center, where his wound was stitched. He was told to follow-up at the Wound Care Center at Olathe Medical Center due to an infection. Claimant testified the emergency room physician told him there was a problem with the healing of his leg because the laceration is where the knee bends. Claimant went to the Wound Care Center on September 22, 2014.

Claimant has someone drive him from his home in Paola to his appointments at the Wound Care Center in Olathe. He has a leg stabilizer, which keeps his leg relatively straight, but doesn't keep it from bending. Claimant sent respondent the pictures of his leg via text message, but did not ask for treatment. He did relate this incident to the original accident that damaged his knee in the first place.

Claimant denies any prior problems with his right knee. His last day of work for respondent was September 17, 2014, at the instruction of Dr. Knox. Claimant had his stitches removed on September 19, 2014. Claimant testified he faxed respondent his off work slip from Dr. Knox, but did not receive a response.

Claimant has been working for the family car dealership more frequently since he stopped working for respondent, but he could not say how much because he doesn't keep track. He testified to sitting in his office with his leg propped up while he supervises two employees.

Claimant has incurred expenses from Miami County Medical Center and from the Wound Care Center and would like those paid. Claimant requests temporary total disability benefits until he is released to gainful employment. Claimant described his problems as severe and he continues to take antibiotics for infection. He cannot put pressure on his

right leg and has to hobble down stairs. He can't stand for any length of time and has difficulty walking. He has numbness on the lateral side of his right knee and up into his thigh.

**PRINCIPLES OF LAW AND ANALYSIS**

K.S.A. 2013 Supp. 44-510c(b)(2)(A) states:

(b)(2)(A) Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary restrictions for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, provided that if there is an authorized treating physician, such physician's opinion regarding the employee's work status shall be presumed to be determinative.

K.S.A. 2013 Supp. 44-510j(h) states:

(h) Any health care provider, nurse, physical therapist, any entity providing medical, physical or vocational rehabilitation services or providing reeducation or training pursuant to K.S.A. 44-510g, and amendments thereto, medical supply establishment, surgical supply establishment, ambulance service or hospital which accept the terms of the workers compensation act by providing services or material thereunder shall be bound by the fees approved by the director and no injured employee or dependent of a deceased employee shall be liable for any charges above the amounts approved by the director. If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director. No action shall be filed in any court by a health care provider or other provider of services under this act for the payment of an amount for medical services or materials provided under the workers compensation act and no other action to obtain or attempt to obtain or collect such payment shall be taken by a health care provider or other provider of services under this act, including employing any collection service, until after final adjudication of any claim for compensation for which an application for hearing is filed with the director under K.S.A. 44-534, and amendments thereto. In the case of any such action filed in a court prior to the date an application is filed under K.S.A. 44-534, and amendments thereto, no judgment may be entered in any such cause and the action shall be stayed until after the final adjudication of the claim. In the case of an action stayed hereunder, any award of compensation shall require any amounts payable for medical services or materials to be paid directly to the provider thereof plus an amount of interest at the rate provided by statute for judgments. No period of time under any statute of limitation, which applies to a cause of action barred under this

subsection, shall commence or continue to run until final adjudication of the claim under the workers compensation act.

K.S.A. 44-534a grants the administrative law judge the authority to determine a claimant's request for temporary total disability and ongoing medical treatment at a preliminary hearing. The Board's review of preliminary hearing orders is limited to specific issues as set forth in the statute.

Claimant objects to the failure of the ALJ to order payment of past medical expenses incurred from the September 5, 2014, accident and the failure to order temporary total disability. As noted above, actions by any health care provider to collect for medical treatment provided are stayed pending the final adjudication of the claim. The ALJ is well within his authority to do just that. It is noted the ALJ granted claimant's request for ongoing medical treatment with the Wound Care Center at the Olathe Medical Center as the authorized medical provider. Likewise, claimant's entitlement to temporary total disability compensation is a decision to be made by the ALJ at the preliminary hearing. Neither issue is appealable to the Board from a preliminary hearing order.

As the ALJ did not exceed his authority in issuing the Order of November 13, 2014, this Board Member is restricted to dismissing claimant's appeal, pending the issuance of a final decision on this claim.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>1</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

### **CONCLUSIONS**

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should remain in full force and effect and the appeal of claimant should be dismissed.

### **DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge William G. Belden dated November 13, 2014, remains in full force and effect and claimant's appeal is dismissed.

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<sup>1</sup> K.S.A. 2013 Supp. 44-534a.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of January, 2015.

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HONORABLE GARY M. KORTE  
BOARD MEMBER

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William G. Belden, Administrative Law Judge